



## CITY OF DURHAM | NORTH CAROLINA

**Date:** October 31, 2014

**To:** Thomas J. Bonfield – City Manager  
**Through:** W. Bowman Ferguson – Deputy City Manager  
**From:** Marvin G. Williams – Director of Public Works

**Subject:** Response to Citizen Requests to Appear (James Williams and Gwyn Silver)

Stone Hill Estates is a multi-phase single family residential development located off of Freeman and Clayton Roads, just north of Wake Forest Hwy in Durham. The developer of the project was Durham Land Associates, LLC. The parent developer company for this project was Macgregor Development. In approximately 2008, the parent development company Macgregor Development filed for bankruptcy, leaving Durham Land Associates, LLC and several other companies it controlled insolvent.

Stone Hill Estates was protected by multiple Performance Bonds from two (2) separate bonding companies. Staff contacted the bonding companies and made claims on the performance bonds for the project. The bonding companies responded by sending out a representative to evaluate the project. This representative completed a punch list with staff on final asphalt course, base repairs, stormwater facilities and various other punch items. The representative for the bonding companies consolidated the data and acquired pricing from various local contractors. After receiving prices the bonding company representative contacted the City of Durham and indicated that it would only pay for certain items under the bonds as they believed that their liability was limited. The City of Durham disagreed with this assessment and made a full demand (again) upon all items through the City Attorney's Office (CAO). After some initial negotiations between the attorneys representing the bonding companies and the CAO, the bonding companies filed a complaint in the US District Court to determine its obligations under the bonds<sup>1</sup>. The judge reviewing this case issued a Memorandum of Opinion and Order (Order) on September 18, 2014. In this Order, the Judge reviewing the complaint issued a final ruling on the two most significant legal issues raised by the parties, namely, the following:

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<sup>1</sup> On June 27, 2011, Developers Surety and Indemnity Company and Selective Insurance Company of America filed a Complaint for Declaratory Judgment in U.S. District Court for the Middle District of N.C.

1. Street Bonds – the sureties are responsible for installing incomplete sidewalk segments and applying the final one-inch layer asphalt where not applied. The sureties are not responsible for repairing subsurface defects or other street repair work that may be necessary before placement of the final asphalt and incomplete sidewalk; and,

2. Stormwater Maintenance Bonds – under the stormwater maintenance facility bonds, the sureties are responsible for the costs of operating and maintaining already-constructed and fully converted stormwater facilities, but such maintenance bonds may not be applied to the cost of completion of the ponds, if not already complete.

As stated above, the Judge did not rule on all the issues before the parties. Some of the remaining issues include the following:

1. Calculation of Costs – the sureties argued that the cost of the street completion work (i.e., last lift of asphalt and completion of incomplete sidewalks) should be calculated as of one year after the issuance of the initial Street Bonds. The Judge found there to be insufficient evidence to support such cost valuation; and,

2. Reduction of Certain Bonds– the sureties argued that certain bonds (No. 593640 for \$34,000.00 and No. B720183 for \$165,000.00) had been reduced by the City to lesser amounts. The Judge found there to be insufficient evidence to support such reduction.

It is important to note that the Judge's Order does not "settle" all disputes raised by the parties in the lawsuit. It does, however, provide greater guidance to the parties in allowing the narrowing of the parameters of settlement. For example, the parties need to agree on the cost and quantity of placement of the last lift of asphalt on the incomplete streets, the linear feet of incomplete 5-foot wide sidewalk, and determine whether to keep in place the stormwater maintenance facility bonds for longterm maintenance and operation of the facilities (after the construction of the facilities has been completed), or to negotiate an agreeable lump sum payment price from the surety to release the bonds. . I have been advised that the CAO has been in contact with counsel for the sureties to exchange information on each of these remaining issues in an attempt to negotiate a final settlement of the case, which may require reconvening the previously impasse mediation. Any settlement of this matter will need to be approved by the City Council

The City of Durham (City) has met and communicated with the residents of Stone Hill Estates several times over the last several year to provide them with lists of all of the punch list items that are outstanding, and to discuss the totality of the repairs that need to be made to the subdivision prior to acceptance by the City.

The items that need to be repaired in the subdivision are typically as follows:

- Final lift of asphalt

- Repairs to base course of asphalt
- Repairs to the sidewalks; cracked sidewalk and curb replacement
- Adjustment of utility valves and manholes
- Fire hydrant repainting
- Stormwater facility construction and reconstruction.
  - Note - There are a total of 5 stormwater management facilities located in Stone Hill Estates Phases 1, 2 and 3. Only 1 of the 5 stormwater management facilities has been accepted by the City of Durham as Complete (Pond #2). The other 4 stormwater management facilities are in various states of decay with one of the stormwater facilities that have failed completely.

At this time, minimal repairs have been made by the street maintenance division of Public Works due to the litigation that was pending with the bonding companies. In addition, the Public Works department recommends that only emergency repairs be made by the City within Stone Hill Estates until the litigation with the bonding companies has been finalized.